No. 235

In The
Supreme Court of the United States

OCTOBER TERM, 1963

UNITED STATES OF AMERICA, *Appellant*

v.

WILLIAM C. WELDEN

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

BRIEF FOR WILLIAM C. WELDEN, Appellee

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Opinion Below

The Memorandum and Order of the District Court (R. 38-40) are reported at 215 F. Supp. 656.

Jurisdiction

Probable jurisdiction was noted on October 14, 1963 (R. 48; 375 U.S. 809).

Question Presented

Whether the appellee who, in obedience to a subpoena, appeared before a congressional subcommittee investigating alleged violations of the antitrust laws and gave testimony under oath substantially connected with the offenses charged in the present indictment obtained immunity from prosecution for these offenses, although he did not claim his privilege against self-incrimination.

Statutes Involved

The Act of February 25, 1903[1], 32 Stat. 854, 904, 15 U.S.C. 32, provides in part:

> . . . no person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under said Acts [the Interstate Commerce Act, the Sherman Act, and the antitrust provisions of the Wilson Tariff Act and all Acts amendatory thereof or supplemental thereto]: *Provided, further*, That no person so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying.

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[1] "An Act making appropriations for the legislative, executive and judicial expenses of the Government for the fiscal year ending June 30, 1904, and for other purposes."

The Act of June 30, 1906[3], 34 Stat. 798, 15 U.S.C. 33, provides in pertinent part:

> "Under the immunity provisions [of the above Act and others] immunity shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath."

Statement of the Case

Appellee was indicted together with four other individuals and three corporations including appellee's employer H. P. Hood & Sons, Inc. in a two count indictment (R. 14-27). Count One charged the defendants with violating Section 1 of the Sherman Act by conspiring, among other things, to fix prices in the sale of milk in the Greater Boston Area; to allocate among themselves the business of selling milk to designated federal, state and municipal institutions in Maine, New Hampshire and Massachusetts; and to engage in collusive bidding for contract awards from these institutions. Count Two charged all three corporations and three of the individuals, including appellee, with a conspiracy to defraud and injure the United States in violation of 18 U.S.C. 371.

Prior to the convening of the Grand Jury and the return of the indictment appellee was subpoenaed to appear before a Special Subcommittee of the Select Committee on Small Business of the House of Representatives, 86th Congress,

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[3] "An Act defining the right of immunity of witnesses under . . . the act entitled 'an Act making appropriations for the legislative, executive and judicial expenses of the Government for the fiscal year ending June 30, 1904, and for other purposes.'"

2d Session, pursuant to H. Res. 51[3], and to testify touching matters of inquiry committed to the Committee.[4] (R. 14, 38-40).

In opening the hearings, the chairman announced that: "The purpose of these hearings is to receive testimony about attempts of large distributors of dairy products in the New England area to destroy small competitors and gain control over prices and markets."[5] (R. 40). Appellee was among the last of some thirty witnesses who appeared before the Committee and one of twenty such witnesses who testified under oath.[5] He was interrogated at considerable length by members of the Committee and its counsel as to the nature of his activities on behalf of his employer and as to the price policy of the company. (R. 39). Testimony was elicited about the economic practices, price changes,

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[3] H. Res. 51 authorized the Select Committee ". . . to conduct studies and investigations of the problems of all types of small business, existing, arising, or that may arise, with particular reference to (1) the factors which have impeded or may impede the normal operations, growth, and development of the potentialities thereof; (2) the administration of Federal laws relating specifically to small business to determine whether such laws and their administration adequately serve the needs of small business; (3) whether Government agencies adequately serve and give due consideration to the problems of small business; and (4) to study and investigate problems of small business enterprises generally, and to obtain all facts possible in relation thereto which would not only be of public interest but which would aid the Congress in enacting remedial legislation . . . . ." H. Res. 51, 86th Cong., 1st Sess., 105 Cong. Rec. 1785.

Its chairman appointed the Special Subcommittee to inquire into and study the problems of small business in the dairy industry. H. Rep. No. 714, 86th Cong., 1st Sess.

[4] The "Hearings before the Special Subcommittee of the Select Committee on Small Business, House of Representatives, 86th Cong., 2d Sess., Part IV, pp. 363-736" are included in the record certified to this Court.

[5] *Ibid.*

and policies of the company, and the competitive situation in the Greater Boston milk market, and about meetings between himself and representatives of competitors of his employer, of which the Committee had previously received complaints and taken testimony. (R. 39-40).

After the return of the indictment appellee moved to dismiss the indictment on the ground that he was being prosecuted for and on account of transactions, matters and things concerning which he had so given testimony, which prosecution was prohibited under the provisions of the Act of February 25, 1903 (15 U.S.C. 32) (R. 28-32). There was no contention by the appellant below (nor is there here) that the testimony given by the appellee did not directly pertain to matters charged in the indictment or that the Congressional Subcommittee was not investigating violations of the antitrust laws. (Appellant's Brief, pp. 4-6).

The district court in its Memorandum and Order allowing the appellee's motion rejected the appellant's argument that the word "proceeding" as appearing in 15 U.S.C. 32 was a technical word containing a "judicial nexus" and not applicable to Congressional hearings, and held that to so construe the statute would "fly in the face of traditional notions of fair play and subject a defendant to stand trial for conduct about which he has been compelled to testify." It also declined to accept the further contention of the appellant that the hearings were not conducted under the antitrust laws. Quoting the Subcommittee Chairman that the hearings concerned "alleged attempts of large distributors of dairy products in the New England area to destroy small competitors and gain control over prices and market," the court found that, "The hearings were clearly within the ambit of the immunity statute" and dismissed the indictment as to the appellee. (R. 38-41).

Argument

THE COURT BELOW CORRECTLY RULED THAT APPELLEE WHO, IN OBEDIENCE TO A SUBPOENA, APPEARED BEFORE A CONGRESSIONAL SUBCOMMITTEE INVESTIGATING ALLEGED VIOLATIONS OF THE ANTITRUST LAWS AND GAVE TESTIMONY UNDER OATH SUBSTANTIALLY CONNECTED WITH THE OFFENSES CHARGED IN THE PRESENT INDICTMENT OBTAINED IMMUNITY FROM PROSECUTION FOR THESE OFFENSES, ALTHOUGH HE DID NOT CLAIM HIS PRIVILEGE AGAINST SELF-INCRIMINATION.

A. The claim of the privilege against self-incrimination is not a prerequisite to acquiring immunity under the Act of February 25, 1903.

The Act of February 25, 1903, *supra*, is an automatic act of immunity requiring no claim of privilege against self-incrimination. *United States* v. *Monia*, 317 U.S. 424.

Indeed, as is stated in *Shapiro* v. *United States*, 335 U.S. 1, 21, n. 27

> "The precise holding in *Monia* was that a witness before an investigatory body need not claim his privilege as a prerequisite to earning immunity under a pre-1933 statute which offered immunity without any reference to the need for making such a claim .... And it was emphasized that, to construe congressional intention otherwise in those circumstances, might well result in entrapment of witnesses as to testimony concededly privileged."

Thus an absence of a claim by the appellee of his privilege against self-incrimination did not destroy the immunity.

B. The Act of February 25, 1903 as supplemented by the Act of June 30, 1906 is plain in its terms and, on its face means to the layman that if he is subpoenaed, and sworn, and testifies, he is to have immunity.

The immunity does not of course extend to prosecution of crimes with which the matters testified to were but remotely connected. *Heike* v. *United States*, 227 U.S. 131. But this is not in issue here.

The appellant's contention that the statute does not reach beyond a judicial proceeding under the auspices of the Attorney General, and hence is not applicable here, is grounded on a technical construction of the word "proceeding" as it appears in the act and on what it terms a "plain reading" of the language of the Act of February 25, 1903 *supra*. As to the first of these points, its reliance is on *Hale* v. *Henkel*, 201 U.S. 43. This is indeed in contrast to appellant's stand in *Hale* v. *Henkel* itself, where it successfully urged this Court to hold that the word "proceeding", as used in the Act was not to receive a narrow or technical construction, but was broad enough to include *at least* an inquiry by a Grand Jury. As to the second point, the appellant in reviewing the "plain language" of the Act of February 25, 1903 completely passes over the Amendment to that Act, (Act of June 30, 1906 supra) wherein the Congress sought, in the light of earlier judicial construction, to declare its prior intent and define the right to immunity of witnesses under the Act. The appellant's arguments were thus put to rest long before they were made.

Early in 1906 a Federal District Court Judge in *United States* v. *Armour & Co.*, 142 Fed. 808 (D.N.D. Ill.) with the decision in *Hale* v. *Henkel* before him, held that the statutory immunity extended to witnesses who had appeared before the Commissioner of Corporations, an official of the Department of Commerce, who was conducting an investigation of the "Beef Trust" pursuant to a resolution of the

House of Representatives,[6] and who admittedly was in no way connected with the Attorney General. Two separate immunity provisions were in issue. One was Section 6 of the Commerce and Labor Act of 1903, 32 Stat. 827, which specifically made applicable to the Commissioner of Corporations the Compulsory Testimony Act of 1893, 27 Stat. 443. The second was the Act here in question, the immunity provision of the Act of February 25, 1903, *supra*.

With respect to the former Act, it was urged by the government that this statute did not apply because the witnesses had not been compelled by subpoena nor sworn. Judge Humphrey, while rejecting that contention on the ground that the necessary degree of compulsion was present in any event, turned to the unconditional immunity statute of February 25, 1903, where neither subpoena, oath, nor testimonial compulsion was a prerequisite, and held that the defendants were entitled to immunity under this Act.

> "If it shall be said that the act of February 14, 1903, establishing the Department of Commerce and Labor, allows immunity to the witness only upon the conditions

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[6] *The Martin Resolution:* "Resolved, that the Secretary of Commerce and Labor be, and he is hereby, requested to investigate the causes of the low prices of beef cattle in the United States since July 1, 1903, and the alleged unusually large margins between the prices of beef cattle and the selling prices of fresh beef, and whether the said conditions have resulted in whole or in part from any contract, combination, in the form of trust or otherwise, or conspiracy, in restraint of commerce among the several States and Territories or with foreign countries; also, whether said prices have been manipulated in whole or in part by any corporation, joint stock company, or corporate combination engaged in commerce among the several States or with foreign nations; and if so, to investigate the organization, capitalization, profits, conduct, and management of the business of such corporations, companies, and corporate combinations, and to make early report of his findings according to law." H. Res. 203, 58th Cong., 2d Sess.

urged by the government, viz., that he shall have resisted until regularly subpoenaed and sworn, no such contention can fairly be made as to the immunity clause of the act of February 25, 1903. The records shows, and it is not disputed, that material evidence was procured by Garfield from the defendants upon the subject of an unlawful combination . . . . It is contended that as to all such evidence the defendants are entitled to immunity under the independent and unconditional act of February 25, 1903, and I am of opinion that they are so entitled." 142 Fed. at 826.

The immediate congressional and executive reaction to the decision of Judge Humphrey demonstrates that it did not lie hidden under a bushel. What was upsetting, however, was not the holding that the immunity provided under the Act of February 25, 1903 was available in an investigatory proceeding outside of the courts but that the decision appeared to mean that the immunity might extend to a witness who was, in effect, a volunteer. The case became a national *cause celebre*[7]. A request for corrective legislation was promptly made by Attorney General Moody and incorporated into President Roosevelt's message to Congress on April 18, 1906. H.R. Doc. No. 706, 59th Cong. 1st Sess.

The floor debates that followed in Congress on the bill sponsored by Senator Knox[8] which was drafted by the De-

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[7]Dixon, *The Fifth Amendment and Federal Immunity Statutes*, 22 Geo. Wash. L. Rev. 447, 459 (1954).

[8]"*A bill (S. 5769) to declare the true intent and meaning of parts of* the act entitled 'An act in relation to testimony before the Interstate Commerce Commission', and so forth, approved February 11, 1893, and an act entitled 'An act to establish the Department of Commerce and Labor' approved February 14, 1903, and an act entitled 'An act to further regulate commerce with foreign nations and among the States,' approved February 19, 1903, and *an act entitled 'An act making appropriations for the legislative, executive and judicial expenses of the Government for the fiscal year ending June 30, 1904, and for other purposes,' approved February 25, 1903.*" 40 Cong. Rec. 7657. (Italics added.)

partment of Justice leaves no doubt that the Congress was fully aware of the construction placed on the immunity statutes by the district court[9]. The bill, as was related to the House by Congressman Littlefield who conveyed the comment of the Attorney General, sought to establish a definite standard under which future immunity would be granted witnesses.[10]

> Mr. Mann: Now, if we pass a law providing that nobody shall have immunity from prosecution unless called as a witness, how are we going to obtain our information before we commence our prosecution?
>
> Mr. Littlefield: There is no trouble at all, so far as the Interstate Commerce Commission is concerned, or the Department of Commerce and Labor, or the Commissioner of Corporations. Each of them has power to summon witnesses, although no case is pending. They have the power under the statute to compel the attendance of witnesses. Of course, if they make an inquiry, and the party inquired of does not see fit to testify unless he is formally summoned and gives testimony on oath, it would establish a legal standard that would protect him and place the Government in a position where they would know what they were doing. He would have a perfect right to insist on that formality being observed. Now, the Attorney-General is of the opinion that under the existing conditions immunity is granted under a great many circumstances when neither party perhaps expected any such result to follow. I make no criticism whatever upon the decision of the judge in Chicago, but the Attorney-General is very firmly of the opinion that the Department of Justice is bound to be very seriously embarrassed in the enforcement of this legislation unless this definite and specific standard is established by Congress.

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[9] 40 Cong. Rec. 7657-58, 8738-40.

[10] Id. at 8738-39.

Perhaps I ought to say that, in my judgment, the legislation upon which Judge Humphrey largely based his ruling was not the act relating to interstate commerce, under which the Interstate Commerce Commission acts, nor the act creating the Bureau of Corporations, under which the Commissioner of Corporations acts, but probably the resolution appropriating $500,000, which contained a very broad and loosely drawn provision in relation to immunity. I am not authorized to say upon what the judge based his decision; but having read what he did say, it is rather my judgment that he was controlled in his conclusion very largely by the language contained in that appropriation, which was, in my judgment, very much broader than is found in the interstate-commerce act or in the act creating the Department of Commerce and Labor.

Now, I can see no practical difficulty. The Attorney-General sees none. The Interstate Commerce Commission, as I understand it, does not apprehend any, and the Commissioner of Corporations does not apprehend any, provided we have this definite legal standard, so that the Government shall know when it confers immunity, and so that the people who give this testimony or appear in court or produce written evidence shall know when they are entitled to immunity. Under existing conditions it is a very uncertain and doubtful proposition.[11]

The result was the enactment of June 30, 1906[12], 34 Stat. 798 which is now codified as 15 U.S.C. 33. The only change

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[11] Ibid.

[12] "*An act defining the right to immunity of witnesses under* the act entitled 'An act in relation to testimony before the Interstate Commerce Commission,' and so forth, approved February 11, 1893, and an act entitled 'An act to establish the Department of Commerce and Labor,' approved February 14, 1903, and an act entitled 'An act to further regulate commerce with foreign nations and among the States,' approved February 19, 1903, and *an act entitled, 'An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1904, and for other purposes,' approved February 25, 1903.*" (Italics added.)

which the Congress saw fit to make in the Act of February 25, 1903, with the *Armour* decision directly before it, was to impose a requirement that henceforth the testimony be given pursuant to a subpoena and under oath.

This Court in *United States* v. *Monia*, which to our knowledge is the most recent pronouncement of this Court on the construction of this legislation (the Act of February 25, 1903 (15 U.S.C. 32) and the Act of June 30, 1906 (15 U.S.C. 33)), stated:

> "In 1906 the District Court for the Northern District of Illinois held, in *United States* v. *Armour & Co.*, 142 F. 808, that a voluntary appearance, and the furnishing of testimony and information without subpoena, operated to confer immunity from prosecution under the Sherman Act. The court held that the immunity conferred was broader than the privilege given by the Fifth Amendment. The decision attracted public interest since, if it stood, one could immunize himself from prosecution by volunteering information to investigatory bodies. Congress promptly adopted the Act of June 30, 1906, *supra*, providing that the immunity should only extend to a natural person who, in obedience to a subpoena, testified or produced evidence under oath. The Congressional Record shows that the sole purpose of the bill was exactly what its language states. Senator Knox, who sponsored the bill, stated: 'Mr. President, the purpose of this bill is clear, and its range is not very broad. It is not intended to cover all disputed provisions as to the rights of witnesses under any circumstances, except those enumerated in the bill itself.'
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> "It is evident that Congress, by the earlier legislation, had opened the door to a practice whereby the Government might be trapped into conferring unintended immunity by witnesses volunteering to testify. The amendment was thought, as the Congressional Record demonstrates, to be sufficient to protect the Government's interests by preventing immunity unless the prosecuting officer, or other Government official concerned, should

compel the witness' attendance by subpoena and have him sworn." 317 U.S. at 428-429.

The import of the district court's ruling, followed by the congressional review and adoption of the Act of June 30, 1906, *supra*, amending the Act of February 25, 1903, *supra*, and as set forth by this Court in *Monia* is plain. The immunity conferred by 15 U.S.C. 32 extends to a proceeding conducted by an investigatory body inquiring into antitrust violations, not under control of the Attorney General, but acting pursuant to the authorization of a resolution of Congress.

The parallel to the situation in the case at bar is precise, except that Congress, as is its current practice, elected to have the instant investigatory proceeding conducted by one of its committees rather than delegate the task to another government official.

It is apparent from the foregoing that the immunity conferring power under the Act of February 25, 1903, *supra*, is held by those governmental bodies that have authority to conduct inquiries and investigations within the antitrust field, and which have the power of subpoena and the authority to exact testimony under oath in such proceedings.

Congress, of course, itself or through its committees, in aid of its legislative function has power to investigate and to compel testimony, *Quinn* v. *United States*, 349 U.S. 155, 160-161, even if such proceedings might disclose crime or wrongdoing, *McGrain* v. *Dougherty*, 273 U.S. 135, 179-180, and even if the disclosures sought to be elicited may also be used in criminal prosecutions. *Sinclair* v. *United States*, 279 U.S. 263, 295.

Here, the appellee was subpoenaed to appear before the Special Subcommittee of the Select Committee which was investigating antitrust violations and inquiring into matters now charged in the indictment. In obedience to the subpoena the appellee appeared and gave testimony under oath substantially connected with such matters charged in the indictment. Clearly the appellee acquired immunity under the Act from this prosecution.

C. *The history of immunity legislation is not in conflict with the decision below.*

There is nothing in the legislative history of the Act of February 25, 1903 that lends any affirmative support to the appellant's position. As one commentator has stated:

> "The debate in the House made little reference to the immunity measure; it consisted almost entirely of partisan statements alleging that one party or the other had the greatest interest in enforcing the antitrust laws. 36 Cong. Rec. 411-19 (1902). There was no discussion of the immunity bill on the floor of the Senate. *Id.* at 989-90." *The Federal Witness Immunity Acts*, 72 Yale L.J. 1568, 1575, n. 33 (1963).

There is not a word in the legislative history to the effect that this immunity proviso was considered to be the sole prerogative of the Attorney General.[13]

The attempt to use the decision in *Hale v. Henkel*, 201 U.S. 43 for an alternative ruling that the immunity provision is limited to "judicial" proceedings, is equally unavailing. This Court merely held that the provision was available *at least* in a Grand Jury investigation and did not there decide the question which was not before it, whether

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[13] 36 Cong. Rec. 411-19, 989-90.

it would apply to investigations conducted by other bodies. The language of this Court in the opinions in *Monia*[14] and *Shapiro*[15] cited above indicates that this Court has never ruled that there is any such limitation.

The appellant's further contention that some significance can be drawn from the absence (which it terms "unwillingness") in congressional enactments of specific immunity provisions for its own committees is chimerical. The first immunity act, passed in 1857[16], related to congressional investigations and only congressional investigations. It was not until 1868 that Congress passed an act which permitted in certain circumstances an immunity that reached to the realm of the Attorney General.[17] In 1892 this Court held, in *Counselman* v. *Hitchcock*, 142 U.S. 547, that this immunity provision was insufficient to negate the Fifth Amendment rights of a witness, and that by implication, the similar limited provision applicable to congressional committees was also inadequate. But until that decision, which was strenuously opposed by the Attorney General, congressional committees had what was thought to be an adequate immunity provision.

In the period which followed, Congress abandoned its former blanket immunity approach and enacted a number of provisions, which were limited to specific areas of investigation. While many of these were primarily directed to specific regulatory bodies, and not directly to either congressional committees or the Attorney General, at least one of them, the Act of February 25, 1903, *supra*, was specifi-

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[14] 317 U.S. 424, *supra*.
[15] 335 U.S. 1, *supra*.
[16] 11 Stat. 156 (1857).
[17] 15 Stat. 37 (1868).

cally held in *Armour*[11] to be applicable to an investigation under the authority of a congressional resolution, and others are at least open to the same interpretation. See e.g. the reference in the Compulsory Testimony Act of 1893, 27 Stat. 443 to "any cause or proceeding, criminal or otherwise."

Finally, it is difficult to see what bearing the legislative history of an act adopted in 1954 (The Immunity Act of 1954, 68 Stat. 743 (18 U.S.C. 3486)) could have on the interpretation of an act adopted in 1903 (The Act of February 25, 1903, *supra*) as contended by the appellant. (Appellant's Brief p. 17). The Immunity Act of 1954 was simply a continuation of congressional policy to limit immunity to specific areas, as in this instance, internal security, rather than bestow blanket power to a branch of the government.

D. There are no "sound policy considerations" in conflict with the decision below.

The appellant's argument from "policy" (Appellant's Brief, pp. 19-20) which reflects repeated warnings throughout its brief, seems to be an amalgam of two different points.

1. That the government may be trapped into conferring an unintended immunity because the witness need not claim his Fifth Amendment privilege.

2. That congressional committees may confer immunity on persons whom the Department of Justice would like to prosecute.

As to the first of these points, the appellant's quarrel is not with the decision of the district court, but with the decision of this Court in *United States* v. *Monia*, *supra*.

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[11] 142 Fed. 808, *supra*.

The fact that a subpoena and oath are required of a witness before immunity attaches had been thought, as Mr. Justice Roberts said in *Monia*,[19] to be a sufficient safeguard to the government. If these prerequisites are now deemed inadequate, the cure is simple. Convert these automatic statutes into "claim" type statutes. Indeed a bill for that purpose with reference to the Act here in question was introduced in the last session of Congress. H.R. 8252, 88th Cong. 1st Sess.

The second point, that persons who ought to be prosecuted may be immunized instead, is based on the suggestion that congressional committees are not equipped with the ability or discretion to conduct investigations without needlessly conferring immunity on the wrong people. If this indeed be the case, this appeal would more properly be directed to the Congress than to this Court. But it is hard to believe that the problem is a real one, and that there is or can be no liaison between congressional committees inquiring in this area and the Department of Justice.

In the years that followed the *Armour* case, *supra*, Congress included an immunity provision in almost every major regulatory measure passed.[20]

There is no suggestion here that without the guiding hand of the Attorney General these provisions have proved unworkable. Immunity statutes are not generally thought to be a hindrance to investigation. Indeed they are passed

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[19] 317 U.S. 424, 429-430, *supra*.

[20] See, e.g., 48 Stat. 87 (1933), 15 U.S.C. 77v(c) (1958) (Securities Act); 48 Stat. 1096 (1934), 47 U.S.C. 409(1) (1958) (Communications Act); 49 Stat. 456 (1935), 29 U.S.C. 161(3) (1958) (National Labor Relations Act); 42 Stat. 1001 (1922), as amended, 49 Stat. 1499 (1936), 7 U.S.C. 15 (1958) (Commodity Exchange Act). See *The Federal Witness Immunity Acts* 72 Yale L.J. 1568, 1576 (1963).

for the precise purpose of aiding investigation. Antitrust investigatory problems can be no greater than those encountered by the respective agencies in agriculture, finance, communications, and labor relations investigations. The principal complaint of the appellant appears to be over what it regards as an unwarranted intrusion of Congress into an area the Department of Justice would rather have reserved for itself.

Finally, it is inappropriate for appellant to suggest that "the district court's observation that it would contravene 'traditional American notions of fair play' to require 'a defendant to stand trial for conduct about which he has been compelled to testify by subpoena power of a Congressional Subcommittee' is far wide of the mark." (Appellant's Brief, p. 20, n. 15). First, the appellant's argument that the district court failed to recognize the basic distinction between the power of Congress to compel testimony generally and to compel incriminating testimony, begs the very question here. If immunity attached as the district court held, the appellee's claim against giving incriminating testimony was surrendered.

Secondly, the district court's quoted remarks were but a restatement of this Court's warning in *Monia*, "[T]he statutes in question, if interpreted as the government now desires, may well be a trap for the witness" 317 U.S. 424, 430, as applied to the facts in the instant case. Here in obedience to a subpoena of a Congressional Subcommittee inquiring into matters charged in the indictment the appellee appeared before it and gave testimony as to such matters. To adopt the interpretation of the statutes in question sought by the government, under these circumstances, and thereby deprive the defendant of immunity

would indeed "fly in the face of the traditional American notions of fair play."

Conclusion

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

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